IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 78 OF 2006

IN

FIRST APPEAL NO. 1053 OF 2006

The Municipal Corporation of Greater Mumbai .... Applicant

Vs.

Phoolchand Ramnaresh Vishwakarma .... Respondent

Mr. J.J. Xavier for Applicant.
Mr. Omprakash Parihar.

CORAM : A.S. OKA, J.
DATE : 14TH DECEMBER, 2007

P.C.

1) Heard Advocates appearing for the parties.

The Advocate for Respondent states that the Respondent is personally present in the Court.

2) This application is filed by the Applicant-Municipal Corporation. The Respondent is the original Plaintiff.

3) The suit is filed by the Respondent-original Plaintiff for challenging action of demolition of suit structure has been decreed by granting perpetual injunction against the Applicant. The result of the decree passed by the

Trial Court is that the notice of demolition issued under Section 351 of The Mumbai Municipal Corporation Act, 1888 cannot be enforced. The finding recorded by the Trial Court is that the Respondent- Plaintiff has failed to prove that the suit structure was in existence prior to the datum line and that the same has been constructed un-authorisedly. Perusal of the impugned judgment shows that the order of demolition passed by the Applicant- Corporation has been held to be legal. However, decree has been passed on the ground that the suit structure is situated in an area which is declared as a slum area under the Maharashtra Slum Areas (Improvement Clearance and Re-development) Act, 1971. (hereinafter referred to as the said Act).

4) Under the provisions of Section 3(Z) read with 3(X) of the said Act of 1971, the structures of only protected occupiers in a slum area are protected. A protected occupier has been defined to mean an occupier of a dwelling structure who holds a Photo Pass. Under Section 3(Y) of the said Act, 1971, a Photo Pass can be issued to an actual occupier of the dwelling structure in existence on or prior to 1st January 1995.

5) Thus the legal position appears to be that unless an occupier of a dwelling structure holds a Photo Pass, he cannot be protected under the provisions of the said Act. In the present case, admittedly a Photo Pass has not been issued to the Respondent- Plaintiff. In view of this factual position, even going by the findings recorded by the Trial Court, the Respondent is not entitled to protect his structure as he is not holding a photo pass and there is nothing on record to show that he was occupying the suit structure on or prior to 1st January 1995.

6) The Respondent has tendered an Affidavit. The said Affidavit is taken on record and marked as 'X' for identification. In the said Affidavit, the Respondent has stated that on 17th June 2000, he has applied for grant of a Photo Pass and the same has not been issued to him. He has given an Undertaking in the said Affidavit that he will follow up the matter with the concerned authorities for issuance of Photo Pass. The Respondent has sought time of six months to obtain a Photo Pass.

7) The statements made in the Affidavit as well as Undertaking therein are accepted. Though the Applicant- Corporation is entitled to relief of stay, time of six months deserves to be granted to

the Respondent to enable the Respondent to obtain a Photo Pass.

8) Hence, Civil Application is disposed of by passing following order :

O R D E R

(i) There will be an interim relief in terms of prayer clause (a). As a result of grant of interim relief, it will be open for the Applicant to take action of demolition on the basis of the order already passed under Section 351 of the Mumbai Municipal Corporation Act, 1888.

(ii) In view of the Undertaking of the Respondent, notwithstanding the grant of stay, the Applicant will not take action of demolition in respect of the suit structure for a period of six months from today to enable the Respondent to obtain a Photo Pass.

(iii) If the Respondent fails to produce a Photo Pass before the concerned Officer of the Applicant-Corporation on or before expiry of six months from today, it will be open for the Applicant to proceed with the action of demolition of the suit structure

on expiry of six months from today.

(iv) It is made clear that the application for grant of Photo Pass made by the Respondent shall be decided by the concerned authority without being influenced by this order.

(v) There will be no order as to costs.

(A.S. OKA, J.)